

No. 11113

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACK EUGENE THOMSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JAN 3 4 1946

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

A. L. WIRIN,

J. B. TIETZ,

257 S. Spring St.,

Los Angeles 12, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney,

JAMES M. CARTER,

Assistant U. S. Attorney,

WM. P. HAUGHTON,

Assistant U. S. Attorney,

JAMES C. R. McCALL,

Assistant U. S. Attorney,

600 U. S. Post Office and Court House

Bldg., Los Angeles 12, Calif. [1*]

In the District Court of the United States in and
for the Southern District of California, Central Division

February, 1945, Term

No. 17796

Viol.: United States Code, Title 50, Appendix,
Section 311, Selective Training and Service
Act of 1940.

INDICTMENT

In the Name and by the Authority of the United States of America, the Grand Jury for the Southern District of California, at Los Angeles, presents on oath in open court:

That Jack Eugene Thomson, hereinafter called the defendant, is a male person within the class made subject to selection service under the Selective Training and Service Act of 1940, as amended; that defendant registered as required by said Act and the rules and regulations promulgated thereunder and became a registrant of Local Board No. 176, said board being then and there duly created and acting, under the Selective Service System established by said Act, in the County of Los Angeles, State of California, in the division and district aforesaid; that pursuant to the terms and provisions of said Act and the rules and regulations promulgated thereunder, said defendant was classified in Class 1-A and was subsequently notified of said classification by said board, and a notice and order by said board was thereafter duly given to

said defendant to report for induction into the armed forces of the United States of America on May 24, 1945, at Reseda, Los Angeles County, California, within the division and district aforesaid; that said defendant did at said time and place knowingly and unlawfully fail and neglect to perform a duty required of him under said Act and the rules and regulations promulgated thereunder, that is to say, the defendant did then and there knowingly and unlawfully fail and neglect to report for induction into the armed forces of the United States, as so notified and ordered to do;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

CHARLES H. CARR,

United States Attorney [2]

A true bill,

J. BOWLES, JR.,

Foreman.

[Endorsed]: Filed June 20, 1945. [3]

At a stated term, to-wit: The February Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 2nd day of July, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Peirson M. Hall,
District Judge

No. 17,796—Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK EUGENE THOMSON,

Defendant.

This cause coming on for arraignment and plea of defendant, Jack Eugene Thomson; Wm. H. Haughton, Assistant U. S. Attorney, appearing as counsel for the Government; J. B. Tietz, Esq., appearing as counsel for the said defendant, who is present on bond:

The defendant states his true name is as set forth in the Indictment, and being informed that he is entitled to a jury trial waives reading of the Indictment and pleads not guilty.

It is ordered that the cause be, and it hereby is, set for trial on July 12, 1945, at 10 a.m.

At a stated term, to-wit: The February Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday, the 13th day of July, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Pierson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for further trial of the defendant Jack Eugene Thomson; James McCall, Esq., Asst. U. S. Attorney, appearing for the Government; A. L. Wirin, Esq., appearing for the defendant; the defendant being present on bond; it is ordered that trial proceed.

Attorney Wirin makes opening statement to the Court for the defendant.

Jack Eugene Thomson, the defendant, (7914 $\frac{1}{2}$ W. Norton Ave., Hollywood) is called, sworn, and testifies in his own behalf.

At 12:02 p.m. Court recesses to 2 p.m. Court reconvenes at 2:10 p.m.; all present as before.

Jack Eugene Thomson, the defendant, resumes the stand and testifies further. Defendant's Exhibit D, article dated May 26, 1928, entitled "Peace on Earth, Good Will Towards Men", is admitted into evidence. The defendant rests at 2:42 p.m. The Government waives opening argument. Attorney

Wirin argues to the Court for the defendant. Attorney McCall makes a statement. The Court makes a statement. Attorney Wirin argues further to the Court. The Court finds the defendant guilty as charged and orders this cause referred to the Probation Officer of investigation and report and continued to Monday, July 30, 1945, at 2 p.m., for hearing on said report and sentence. The defendant is permitted to remain at liberty on present bond. [5]

At a stated term, to-wit: The February Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 30th day of July, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for hearing on report of the Probation Officer and for sentence of defendant Jack Eugene Thomson; Wm. P. Haughton, Assistant U. S. Attorney, appearing as counsel for the Government; A. L. Wirin, Esq., appearing as counsel for the said defendant, who is present on bond:

Attorney Wirin makes a statement in mitigation.

The Court pronounces sentence upon the defendant as follows:

District Court of the United, Southern District of
California

No. 17796—Criminal Indictment in one count for
violation of U.S.C., Title 50, Sec. 311 App.—
S. T. & S. A.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

JACK EUGENE THOMSON,
Defendant.

JUDGMENT AND COMMITMENT

On this 30th day of July, 1945, came the United States Attorney, and the defendant Jack Eugene Thomson, appearing in proper person, and by counsel, A. L. Wirin, Esq., and,

The defendant having been convicted on a verdict of guilty of the offense charge in the Indictment in the above-entitled cause, to-wit: failure to report for induction into the armed forces of the United States, as so notified and ordered to do, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, hav-

ing been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one (1) year in a Federal Penitentiary to be designated by the Attorney General and in addition thereto pay a fine unto the United States of America in the sum of \$1000.00, and stand committed until paid.

It is Further Ordered that the clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) PEIRSON M. HALL,
United States District Judge.

Filed this 30th day of July, 1945.

(Signed) EDMUND L. SMITH,
Clerk.

By J. M. HORN,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Jack Eugene Thomson, 7914 $\frac{1}{2}$ West Norton Avenue, Hollywood, California.

Name and address of Appellants' attorneys: A.

L. Wirin and J. B. Tietz, 257 South Spring Street,
Los Angeles 12, California.

Offense: Violation of Selective Training and
Service Act of 1940.

Date of Judgment: July 30, 1945.

Brief description of judgment or sentence: Im-
prisonment, date and place to be designated by
the Attorney General.

Name of prison where now confined: L. A.
County Jail.

I, the above-named Appellant, hereby appeal to
the United States Circuit Court of Appeals for the
Ninth Circuit from the judgment above mentioned
on the grounds set forth below.

Dated: July 30, 1945.

(Signed) JACK THOMSON,

Defendant and Appellant [8]

GROUND OF APPEAL

I.

The judgment of conviction is unsupported by
the evidence.

II.

The Court erred in ruling that there was no mis-
apprehension of the law in the action of the Selec-
tive Service Agencies in refusing the defendant a
classification as a conscientious objector.

III.

The Court erred in holding that the defendant could not present, as a defense, evidence that the defendant was a conscientious objector although the defendant had submitted to and completed all of the administrative formalities leading to induction short of actually taking the oath of induction.

IV.

The judgment of conviction violates the rights of defendant to freedom of religion.

Dated this 30th day of July, 1945.

A. L. WIRIN and J. B. TIETZ
By A. L. WIRIN,
Attorneys for Defendant and
Appellant. [9]

Received copy of the within Notice of Appeal
this 31st day of July, 1945.

CHARLES H. CARR RM
U. S. Attorney,
Attorney for U. S.

[Endorsed]: Filed July 31, 1945. [10]

[Title of District Court and Cause.]

APPLICATION FOR BAIL ON APPEAL

Jack Thomson defendant, having been found guilty; and having filed his Notice of Appeal, hereby applies for bail on appeal.

There is a substantial question on appeal unde-

terminated by the Supreme Court of the United States or by the Ninth Circuit Court of Appeals. That question is whether or not a registrant charged with a violation of a Local Draft Board order has sufficiently exhausted his administrative remedies and steps within the Selective Service System so as to challenge the validity of the Local Draft Board order as a defense to a criminal prosecution.

A. L. WIRIN and J. B. TIETZ
By A. L. WIRIN
Attorneys for Defendant and
Appellant

[Endorsed]: Filed July 31, 1945. [11]

[Title of District Court and Cause.]

ORDER RELEASING DEFENDANT ON
BAIL ON APPEAL

Upon application of the defendant for release on bail on appeal, the defendant having filed his Notice of Appeal,

Good cause appearing therefor

It is ordered that the defendant be released on bail, on appeal to the Ninth Circuit Court of Appeals in the sum of \$2,500.

Dated this 31st day of July.

PEIRSON M. HALL,
Judge.

[Endorsed]: Filed July 31, 1945. [12]

BOND ON APPEAL

United States of America,

Southern District of California—ss.

Be It Remembered, that on this 31st day of July in the year of our Lord one thousand nine hundred and forty-five, before me, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, in the Ninth Circuit, personally came Jack Thomson, principal, and Charles Mackintosh, surety, and severally acknowledged themselves to owe to the United States of America, the sum of Twenty Five Hundred (\$2,500.00) Dollars, depositing herewith with the Clerk Twenty Five Hundred Dollars in United States currency, said sum being the property of Charles Mackintosh, surety, if default shall be made in the conditions following, to-wit:

Whereas, lately on the 30th day of July, 1945, in the District Court of the United States for the Southern District of California, in a cause pending in said District Court between the United States of America and Jack Thomson, defendant, a judgment and sentence was rendered against the said Jack Thomson and the said Jack Thomson filed an appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence imposed against him, and

Whereas, bail was fixed in the sum of Twenty Five Hundred Dollars pending the disposition of said appeal.

Now, the conditions of this recognizance are such, that if the said Jack Thomson shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument or when required by law or rule of said United States Circuit Court of Appeals and from day to day thereafter in said United States Circuit Court of Appeals until said cause is finally disposed of, and shall abide by and obey all [13] orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United States for the Southern District of California may direct, if the judgment and sentence appealed from shall be affirmed, and shall appear before the District Court of the United States for the Southern District of California on such day or days as shall be set for a retrial of said case, provided the judgment of the District Court of the United States for the Southern District of California is reversed by the said United States Circuit Court of Appeals; and shall not depart the jurisdiction of the District Court of the United States for the Southern District of California without leave, then this recognizance to be void, otherwise to remain in full force, virtue and effect.

And we, the undersigned Principal and Surety, do hereby Stipulate, Agree, and Consent, that in case the aforesaid recognizance shall be forfeited judgment may be entered for the sum set forth in

said recognizance, and that execution issue thereon according to law.

JACK THOMSON,
Principal

CHARLES MACKINTOSH,
Surety.

EDMUND L. SMITH,
Clerk, U. S. District Court, Southern District of
California

By J. M. HORN,
Deputy Clerk, U. S. District Court, Southern Dis-
trict of California. [14]

Examined and recommended for approval as pro-
vided in Rule 8.

J. B. TIETZ,
Attorney for Petitioner.

This recognizance shall be deemed and construed to contain the "consent and agreement" for summary, judgment and execution therein mentioned in Rule 8 of the District Court.

The within bond is approved and ordered filed this 31st day of July, 1945.

PEIRSON M. HALL,
Judge.

[Endorsed]: Filed July 31, 1945. [15]

[Title of District Court and Cause.]

APPLICATION FOR EXTENSION OF TIME
FOR SETTLING BILL OF EXCEPTIONS;
AND AFFIDAVIT

State of California,
County of Los Angeles—ss.

A. L. Wirin, being first duly sworn, deposes and says: that he is an attorney for the defendant herein; that he has been unable to prepare a proposed Bill of Exceptions for the reason that the court reporter has been crowded with many tasks, and has been unable, up to the present time, to prepare a Transcript of the proceedings of the trial of the case.

Wherefore, an extension of thirty days is prayed for, within which a Bill of Exceptions may be settled and filed.

A. L. WIRIN.

Subscribed and sworn to before me this 17th day of August, 1945.

(Seal) J. B. TIETZ,
Notary Public

ORDER

Good cause appearing therefor, it is hereby ordered that the time for the preparation, settling and filing of a Bill of Exceptions herein be extended to September 30, 1945.

PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed Aug. 20, 1945. [16]

[Title of District Court and Cause.]

PRAECIPE—INSTRUCTION TO CLERK RE
PREPARATION OF RECORD

To the Clerk of the above-entitled Court:

You will please prepare a transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, under the appeal heretofore taken herein, and include in said transcript the following pleadings, proceedings, orders and documents, to-wit:

1. The Indictment.
2. Minute Order of July 2, 1945, arraignment and plea.
3. Minute Order of July 13, 1945, finding of guilt.
4. Minute Order of July 30, 1945, Judgment, sentence and Commitment.
5. Minute Order of July 31, 1945, fixing amount of bail bond on appeal.
6. Bail bond on appeal.
7. Notice of Appeal and Grounds of Appeal.
8. Stipulation and order extending time for Bill of Exceptions, August 20, 1945. [17]
9. Assignment of Errors.
10. Order extending time for Bill of Exceptions, October 3, 1945.

11. Bill of Exceptions and attached exhibits.

12. This Praecipe.

Dated this 14th day of November, 1945.

A. L. WIRIN and J. B. TIETZ

By J. B. TIETZ,

Attorneys for Defendant [18]

AFFIDAVIT OF SERVICE BY MAIL

(C.C.P. 1013a)

State of California,

County of Los Angeles—ss.

Miriam Lischner, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled cause; that affiant's address is 257 So. Spring St., Los Angeles 12, Calif. That on the 14th day of November, 1945, affiant served the within Praecipe Instruction to Clerk Re Preparation of Record on the Attorney for Plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiff, at the address of said attorney as follows: Chas. H. Carr, Esq., U. S. Att'y, Sixth Floor, Post Office and Court House Bldg., Los Angeles 12, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the

attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

MIRIAM LISCHNER

Subscribed and Sworn to before me this 14th day of November, 1945.

(Seal) J. B. TIETZ,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Nov. 15, 1945. [19]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 19 inclusive contain full, true and correct copies of Indictment; Minute Orders entered July 2, 1945, July 13, 1945, and July 30, 1945; Judgment and Commitment; Notice of Appeal; Application for Bail on Appeal; Order Releasing Defendant on Bail on Appeal; Bond on Appeal; Application and Order Extending Time for Settling Bill of Exceptions and Praecipe, which together with Original Bill of Exceptions and Orig-

inal Assignment of Errors, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$6.25, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21st day of November, 1945.

(Seal)

EDMUND L. SMITH,
Clerk

By THEODORE HOCKE,
Chief Deputy Clerk.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Defendant in the above-entitled action assigns as errors the following:

I.

The action of the Court in ruling that there was no misapprehension of the law in the action of the Selective Service Agencies in refusing the defendant a classification as a conscientious objector.

II.

The holding of the court that the defendant could not present, as a defense, evidence that the defendant was a conscientious objector although the de-

fendant had submitted to and completed all of the administrative formalities leading to induction short of actually taking the oath of induction.

III.

The judgment of conviction violates the rights of defendant to freedom of religion.

Dated this 21st day of September, 1945.

A. L. WIRIN and J. B. TIETZ

By J. B. TIETZ,

Attorneys for Defendant and
Appellant

Received copy of the within this 22nd day of
September, 1945.

CHARLES H. CARR,

U. S. Attorney

[Endorsed]: Filed Sept. 24, 1945.

At a Stated Term, to wit: The October Term 1945, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the first day of October, in the year of our Lord one thousand nine hundred and forty-five.

Present: Honorable Clifton Mathews, Circuit Judge, Presiding; Honorable William Healy, Cir-

cuit Judge; Honorable Homer T. Bone, Circuit Judge.

No. 11113

JACK EUGENE THOMSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO PROPOSE
AMENDMENTS TO LODGE BILL OF EX-
CEPTIONS, AND TO HAVE THE BILL
OF EXCEPTIONS SETTLED AND FILED

Upon consideration of the application of Mr. James C. R. McCall, Jr., Assistant United States Attorney, counsel for appellee, for an extension of time within which the appellee may propose amendments to the bill of exceptions heretofore prepared and lodged by appellant, and appellee through his counsel, Messrs. A. L. Wirin and J. B. Tietz, consenting thereto, and by direction of the Court.

It Is Ordered that the time within which appellee may propose its amendments to the lodged bill of exceptions herein, and within which appellant may procure to be settled and filed the bill of exceptions herein be, and hereby is extended to and including October 30, 1945.

I hereby certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of October, 1945.

(Seal) PAUL P. O'BRIEN,
Clerk, U. S. Circuit Court of Appeals for the Ninth
Circuit.

[Endorsed]: Filed Oct. 3, 1945.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that the above entitled case came on for trial on July 12 and 13, 1945, before the Honorable Peirson M. Hall, United States District Judge, in the District Court of the United States for the Southern District of California, Central Division, at Los Angeles, California.

The United States of America, plaintiff, appeared by Charles H. Carr, United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney, and the defendant Jack Eugene Thomson appeared in person and with counsel, A. L. Wirin.

Plaintiff and defendant signed and filed a waiver of trial by jury, approved by the Court, and the trial was heard by District Judge Hall, without a jury.

The following proceedings were thereupon had, and the following evidence, both oral and documentary, including the stipulations herein contained, was received, in the presence of the defendant, to-wit:

HUGO A. CARLSON

Called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

That he is chairman of Local Board No. 176 of the Selective Service System, at Reseda, California; defendant is a registrant attached to the territorial jurisdiction of this local board, and first registered with such board on April 21, 1943, giving his address as 18000 Ventura Boulevard. Defendant was last classified 1-A by the local board on November 20, 1944; and upon appeal by the defendant, he was classified 1-A by the Appeal Board on April 11, 1945; defendant was notified of this action; and was ordered to report for induction into the armed forces on May 24, 1945, at Reseda, in Los Angeles County, California; and failed to appear at the time and place designated in such order.

Mr. Carlson identified, and there were admitted in evidence as Government's Exhibits Nos. 1, 2, 3, 4, and 5, the following papers and documents contained in the defendant's Selective Service file kept by the local board, the pertinent or material provisions of such exhibits being as follows, to-wit:

GOVERNMENT'S EXHIBIT No. 1

Defendant's Registration Card (DSS Form 1, Rev. 11-16-42), stating, over the defendant's signature, the following information about himself, under oath; Serial No. W-79; Name, Jack Eugene Thomson; Order No. 11845; Place of Residence, 18000 Ventura Blvd., Tarzana, Los Angeles County, California; Mailing Address, Employer's Name and Address and Place of Employment, all given as—Adohr Milk Farms, 18000 Ventura Blvd., Tarzana, Calif.; Age in Years, 18; Place and Date of Birth, April 21, 1925, Los Angeles, California. Date of Registration, April 21, 1943.

GOVERNMENT'S EXHIBIT No. 2

Defendant's Selective Service Questionnaire (DSS Form 40, Rev. May 26, 1941) signed and sworn to by defendant May 10, 1943, stating the following, to-wit:

“To the best of my knowledge, I have no physical or mental defects or diseases.” . . . “I have completed 8 years of elementary school and 4 years of high school.” “I have had the following schooling other than elementary and high school: Name of University, University of California in Los Angeles; Court of Study, Pre-Mechanical Engineering, Major; Length of Time Attended, 2½ Semesters.” “The job I am now working at is—Machine Milker. I do the following kind of work in my present job: I wash and milk 52-60 cows twice a day.” “I have had ½ years experience in this kind

of work. My average monthly earnings in my present job are \$175.00." Questions in Series VII for "Minister, or Student Preparing for the Ministry," checked in ink by defendant without answers.

The following statements were checked affirmatively by defendant in Series X:

"1. By reason of religious training and belief, I am conscientiously opposed to war in any form and therefore claim exemption from combat training and service.

"2. I am also, by reason of religious training and belief, conscientiously opposed to participation in noncombatant military service and request, in the event I am found to be conscientiously opposed thereto, that, in lieu of my induction into the land or naval forces of the United States, I be assigned to work of national importance under civilian direction; and I agree to perform such work and conform to all rules and directions made and given with reference thereto by the President of the United States or by such person as he may designate or appoint for such purpose pursuant to such rules and regulations as he may prescribe."

Instructions printed over these statements were:

"Only registrants who are conscientiously opposed to combatant or non-combatant military service by reason of religious training and belief shall fill in this series, and shall obtain from the Local Board a special form (Form 47) on which to give substantial evidence of conscientious objection. The

Local Board, after considering all other classes of deferment, will determine whether the registrant shall be classified as a conscientious objector on the basis of the claim made and the information contained in the special form."

Under Series V—Agricultural Occupations, the defendant said he was working as a "wage hand (hired man)," "I have been engaged in farm work for 1/2 years . . . I do live on the farm with which I am connected . . . I am not actually responsible for the operation of the farm on which I live." . . . The principal crops and livestock of the farm—Approximately 2,000 cows. "The number of people who work on this farm is approximately 50 of whom all (50) are hired hands."

Under Registrant's Statement Regarding Classification, defendant wrote: "2-C is the usual classification of milkers on this dairy and I think that I should be given this classification before my Class IV Classification is considered."

On the back of the Questionnaire appear the following entries:

Minutes of Action by Local Board

"The Local Board classifies the registrant Class II, Subdivision C by the following vote: Yes 3, No —. 5/10/43. (Signed) W. Frank Brown, Member."

Appeal to Board of Appeal

"I hereby appeal to the Board of Appeal from

the determination of the Local Board. Date 4/22/44.
(Signed) Louis S. Frye, Appeal Agent."

Minutes of Other Actions

Dates

- 4-17-44—Form 57 to Registrant, Form 44 to Appeal Agent, Form 59 to Employer.
- 4-18-44—Re-Classified 2-C, 3 Yes L.C.H.
- 4-18-44—DSS Form 57 to registrant, 59 to U.S. D.A., 110 to appeal agent.
- 5- 8-44—File returned from State Hdq. after appeal.
- 5- 8-44—Reclassified 1-A-O DSS Form 57 to registrant, 59 to employer, and U.S.D.A.
- 5-15-44—Appeared before board requesting 4-E classification.
- 5-16-44—File sent to Captain Raider, Coordinator.
- 6- 1-44—Registrant classified in 4-E by Board of Appeal, vote of 4 to 0 (File not returned to Local Board on this classification.
- 7-11-44—File returned after reconsideration by Board of Appeal. Classification changed to 2-C by Board of Appeal, vote of 4 to 0.
- 7-11-44—Form 57 to registrant. Form 59 to employer, U.S.D.A. War Board, Appeal agent.
- 9- 6-44—Reclassified in 1-A. Deferment not recommended by U.S.D.A. War Board. Not sufficient evidence in file to justify 4-E classification. 2 votes. L.P.F. H.A.C.
- 9- 7-44—Form 57 to registrant. Form 59 to employer and U.S.D.A. War Board.

Dates

11-20-44—Registrant appeared before the Board. H.A.C. No new evidence submitted—Continued in 1-A. 3 Yes. L.C.H.

4-20-45—File returned after appeal. Department of Justice did not uphold claim of reg as conscientious objector. Appeal board classified registrant in 1-A by vote of 3 to 0.

4-20-45—Form 59 mailed to registrant and to employer.

GOVERNMENT'S EXHIBIT No. 3

Order to Report for Induction (DSS Form 150, Rev. 1-15-43): "Date of Mailing, 5-4-45."

"The President of the United States,

"To Jack Eugene Thomson, Order No. 11845.

Greetings:

"Having submitted yourself to a local board composed of your neighbors for the purpose of determining your availability for training and service in the land or naval forces of the United States, you are hereby notified that you have been selected for training and service therein.

"You will therefore report to the local board named above (Local Board No. 176) at 18451 Sherman Way, Reseda, Calif., at 6:30 a.m. on the 24th day of May, 1945. (Signed) Hugo A. Carlson, Member or clerk of the local board."

GOVERNMENT'S EXHIBIT No. 4

Five Letters From the Defendant, as follows:

The first, dated May 23, 1945, addressed to and received by Local Board No. 176 on May 24, 1945, and reading as follows:

"Gentlemen: This is to advise you that I will not appear for induction May 24, 1945. I have no desire to disobey the law, but as my conscience will not permit me to kill, I cannot accept military service. Enclosed is a copy of a letter which I am sending to the United States Attorney, the United States Marshal, the Federal Bureau of Investigation and the Federal Commissioner advising them of my delinquency and telling them where I can be conveniently located. Respectfully, Jack Thomson."

The other four letters, dated May 24, 1945, and addressed respectively to the four federal officers and agency mentioned above, at the proper street addresses in Los Angeles, Calif., each read as follows:

"Dear Sir: This is to advise you that I have not appeared for induction into the armed forces as directed by my draft board. My scheduled induction date is May 24, 1945. My name is Jack Eugene Thomson, I can be found at 7914½ W. Norton Ave., Hollywood 46. The telephone number here is HE 5748. When you wish to arrest me, if you will call me or send me a letter, I will be happy to report at any place you designate. Respectfully yours, Jack Thomson."

GOVERNMENT'S EXHIBIT No. 5

Report of the Hearing Officer of the Department of Justice, Pursuant to Section 5(g) of the Selective Training and Service Act of 1940; and Letter Containing the Ruling of the Department of Justice Based Thereon, dated March 29, 1945, both as follows:

“Department of Justice
Office of the Assistant to the Attorney General
Washington 25

March 29, 1945

“Chairman, Appeal Board No. 12, Group 14
Selective Service System
Room 210, 333 West 2nd Street
Los Angeles 12, California

Dear Sir:

Re: Jack Eugene Thomson, Order No.
11845, Local Board No. 176, Reseda,
California.

“After examination and review of the entire file and record, the Department of Justice finds, as a matter of fact, that the conscientious objections of the above-named registrant are not sustained on the ground that he has failed to prove that such alleged objections are based upon religious training and belief.

“As required by Section 5(g) of the Selective Training and Service Act of 1940, an inquiry has been made in this case and an opportunity to be

heard on his claim for exemption was accorded to the registrant by Honorable E. S. Williams, Hearing Officer for the Southern District of California. The report made by the Hearing Officer to the Department is enclosed, together with the Selective Service Cover Sheet, for the information of your Board.

“Accordingly, the Department of Justice recommends to your Board that the registrant be not classified as a conscientious objector.

“The original of this letter containing the recommendation of this Department and the report of the Hearing Officer should be placed in the registrant’s Cover Sheet in accordance with Section 627.25(c) of the Selective Service Regulations.

“It will be appreciated if you will advise this office of the classification accorded this registrant by your Board after consideration of the foregoing recommendation.

Very sincerely,

JAMES P. McGRANERY

The Assistant to the Attorney
General.”

“Report of Hearing Conducted by the Department of Justice Pursuant to Section 5(g) of the Selective Training and Service Act of 1940

Re: Jack E. Thomson, Conscientious Objector

Local Board No. 176, Reseda, Los Angeles County,
Appeal Board No. 12, Group 14, Los Angeles, California.

File No. 45-0197—Docket No. 820
United States Attorney 820
Hearing Officer 820”

“Preliminary Statement

Name and Address of Registrant: Jack E. Thomson, 7914½ W. Norton Avenue, Hollywood, California.

Questionnaire Filed: D.S.S. Form 40, May 10, 1943. D.S.S. Form 47, May 10, 1943.

Nature of Claim for Exemption: From both combatant and non-combatant military service.

Action by Local Board: Classified II-C, May 10, 1943. Reclassified II-C, April 17, 1944. Reclassified IA-O, May 8, 1944. Reclassified II-C by Board of Appeal July 11, 1944, and Form 57 sent to Registrant on same day. Reclassified I-A, September 6, 1944. Classification I-A continued November 20, 1944.

Date of Appeal: November 28, 1944.

Action by Appeal Board: The Board of Appeal

reviewed the file and decided that the registrant should not be classified in any of the classes set forth in Section 623.21 of the Regulations and ordered the entire file to be transmitted to the Department of Justice for the purpose of securing an advisory recommendation—January 3, 1945.

Date File Received by the Department of Justice: January 18, 1945.

Date File, Including Investigative Report of Federal Bureau of Investigation, Received by Hearing Officer: March 6, 1945.

Notice of Hearing: March 6, 1945.

Hearing Held Pursuant to Notice: At room 600, Federal Building, Los Angeles, 12, California, on March 20, 1945. Registrant personally appeared at the hearing in response to notice mailed to him."

"STATEMENT OF FACTS

"1. Registrant was born April 21, 1925, being now twenty years of age. His education consisted of eight years elementary school, four years high school and two and one-half semesters at the University of California in Los Angeles taking a preparatory course for Engineering. Registrant is employed at the present time as a machine milker for Adohr Milk Farms.

"2. Registrant stated that he had never been a member of any church or religious organization and that his parents had not been members of any church or religious organizations. He stated that

he knew very little about the bible, having seldom read the bible and that he did not know any of the books of the bible, not knowing what were the first four books of the New Testament. Registrant stated that he had not been interested in or active in any Social Welfare work or organization. He stated that when he was in high school and general collections were made among the students for the benefit of the Red Cross, he had contributed along with the others and he said that likewise he had made contributions to the Community War Chest at times when campaigns for funds were being held. He stated that he had never made any contribution to the Red Cross Blood Bank, because working in the dairy as he was, he needed all of his strength. Registrant stated that his mother and father were glad to contribute to the relief of personal friends who might be in financial distress but that they had never connected themselves with any work for public aid and relief, as for example, the Red Cross. While registrant was at the University of California in Los Angeles, he did not participate in the activities of the religious or welfare center conducted in that college community. Registrant entered the University when he was 17, this was in the early part of 1942 and registrant continued at the University pursuing his pre-Engineering course until the latter part of that year. Registrant stated that at this time he saw an advertisement of the Adohr Milk Farms calling for milkers and stating that good wages were paid, and that the work entitled the employee to occupational deferment. Registrant

stated that upon reading this advertisement, he concluded that he would apply for employment, that he did so and was accepted, and has worked for the Adohr Milk Farms since. He stated that the principal inducement to him to apply for this employment was the chance of obtaining occupational deferment with respect to Selective Service. He said that also the wages paid were regarded by him as very good. Registrant stated that he came to this conclusion himself and that he did not take this employment at the suggestion of his parents. Registrant stated that while he was in high school he engaged in some forms of sport, such as wrestling and touch ball, his preference being for volley ball. He never played the American game of football and he never went hunting and fishing. He stated that he had always been taught by his parents to be kind and gentle toward animals and toward people and that he never should engage in any fights or physical conflicts. Registrant stated he was interested in music and paintings and Architecture, and that his inclination was toward the quiet life and not mixing with other people in general. He stated that his parents had considered having a farm in Canada or in the Argentine and that his father would have liked this kind of a life. Registrant stated that he could not take the life of an animal and that particularly he could not take the life of a human being. Registrant stated that he could not take the life of a criminal or of a desperado, even to save the life of one near and dear to him. He would do all he could to protect such a person, and would forfeit

his own life in attempting to give that protection, but if that effort would not avail, he nevertheless would not take the aggressor's life. Registrant stated that this attitude had been taught him at home and he associated it in his mind with the teachings of Jesus. Scenes of violence and carnage were repellant to registrant, as he stated, although he said further that aversion to such scenes was not the cause of his refusal to take another's life. While at the University of California in Los Angeles, registrant took R.O.T.C., and became a Corporal for excellence in drill—he at no time made any protest against taking this military training..

“3. Dr. E. P. Ryland appeared with registrant as a witness in registrant's behalf. Dr. Ryland stated he had known registrant about two years and that he had had numerous talks with registrant and had attempted to get to the foundation of registrant's ideas. Dr. Ryland stated that while registrant was not a religious conscientious objector in the ordinary sense, he felt that registrant was sincere in his attitude.

“4. No exhibits were offered or introduced.

“5. A summarization of the investigative report of the Federal Bureau of Investigation in this case is as follows:

“It was ascertained at the high school attended by registrant that he graduated in 1942 with high scholastic honors. A teacher stated that registrant was a very hard worker, but that he was not par-

ticularly altruistic, explaining that registrant was not enthusiastic about contributing to the various charities. Another teacher stated that registrant was not very altruistic, explaining that registrant had not contributed to such charities as the Red Cross, informant not knowing whether this was due to personal penuriousness or whether registrant did not approve of such charities, this informant saying, however, that he would recommend registrant for his personal qualities. It was ascertained at the University of California in Los Angeles that registrant entered on January 30, 1942, and withdrew on November 24, 1942, registrant's major being Physics; that registrant gave as his reason for withdrawing, that he had over strained his eyes and that he felt if he quit, his eyes would come back to normal.

"A reference stated that registrant was a very self-contained boy and did not express his thought much to others; that registrant did not belong to any church and had never gone to Sunday school; that registrant's father was well able to put registrant through school and that informant did not know why registrant had left school; that registrant had been brought up in a gentle way and taught that fighting and killing were wrong and that informant believed therefore, that registrant was sincere in his present attitude: that registrant's father, while not belonging to the Socialists was a student of Socialism and that a brother of registrant's father had belonged to the Socialist party in Kansas City.

"Another reference stated that registrant was a

studious, fine boy and not one to discuss his innermost feelings, informant saying that informant had heard registrant make only one statement concerning registrant's pacifism, namely that he was against killing, as there were other ways to settle things than through wars; that registrant had been brought up under Pacifist conditions since a child and was different from other boys his age, in that he was satisfied to stay home and study or read and did not always want to be "on the go," registrant liking, however, paintings and music and taking an interest in Architecture; that informant believed that registrant's conscientious objection was derived through his own reasoning and was not due to registrant's parents, although informant believed that registrant would not take a major step without discussing it with his parents; that informant believed that registrant was sincere and honest in his present attitude and was not attempting to evade military service by claiming to be a conscientious objector.

"Another reference stated that informant, since knowing registrant in 1938, had known him to be against killing and war and that such attitude was registrant's own idea and not that of his parents; that, however, registrant had been brought up that way and was a very gentle sort of boy and had never played football because he was opposed to conflict; that informant had never heard registrant discuss religion and did not know whether or not registrant believed in God, informant saying, however, that informant believed that registrant was a sincere

Pacifist; informant stated that registrant had read literature issued by the Fellowship of Reconciliation; that registrant had an inquisitive mind and was much inclined after artistic things, such as music and painting; that informant believed that registrant was sincere.

“A party who had known registrant about seven years stated that he was from a fine family, that he was gentle, studious, kind and courteous; that registrant’s father was a Pacifist and that informant believed registrant had been brought up by his father as a conscientious objector; informant saying that informant believed that the objection of registrant’s father was political rather than moral, informant saying, however, that informant believed registrant was sincere and was not trying to evade military service.

“An employer stated that registrant was a good worker and got along well with other employees and that informant was aware that registrant was a conscientious objector.

“A fellow employee stated that registrant was a quiet, unassuming boy and a good worker, that there had been some comment about registrant for his failing to contribute to the Red Cross or Community Chest.

“A foreman stated that registrant was quiet, industrious and a good worker, dependable and trustworthy; that informant knew that registrant was a conscientious objector, but that registrant never said anything about it.

"Another informant at the same place of employment stated that registrant was studious and inquisitive; that registrant was self-centered and put his own interests before those of others; that on one occasion registrant had gone into the cook house and had taken all the bananas and eaten them himself, bananas being a scarce item of diet for the men on the farm, and that on this occasion registrant's demeanor was "The hell with anyone else" (when called to his attention registrant denied the foregoing incident, stating that on one occasion when he went into the cook house, as he was permitted to do to get oranges or such, he found a large quantity of bananas and had taken two for himself—H.O.); that registrant never contributed to any public charities, such as the Red Cross or Community Chest when the employing Company sought contributions from all employees, and that registrant had ridiculed the idea of giving blood for the wounded soldiers and had ridiculed the idea of buying war bonds (registrant denied these last two statements—H.O.); that registrant had bragged that he was an Agnostic and that he was only working at the dairy to secure deferment as an essential agricultural worker, and that registrant never has mentioned that his opposition to war is based on the taking of human life, but has always argued to the effect that the United States was wrong to be in the war and had no business to be in it in the first place (registrant stated that the foregoing did not correctly represent his position, that he never undertook to say whether or not the Government was

right or wrong, but took the position simply that as for himself, he would not engage in the war—H.O.).

“A neighbor said that when informant had expressed wonder why registrant was not in the army, his father had said that registrant was in an essential industry; that registrant was a retiring sort of boy.

“Other neighbors stated that registrant was an only child and informants believed registrant’s conscientious objections resulted from pressure from his parents, that, however, registrant had a mind of his own and was very practical, materialistic and highly intelligent.

“A former class mate of registrant at high school stated that registrant was recognized as a most intelligent student, but that registrant was a self-centered and conceited boy, who was friendly but not particularly popular; that informant never had heard registrant mention the war or any objections to it and that informant was not aware that registrant was a conscientious objector.

“A party who had been intimate with registrant as well as a neighbor, stated that informant had not heard registrant state his views with regard to military service, although informant had assumed more or less that registrant was opposed to military service, this assumption based on informant’s observation of registrant and his family, informant saying that he knew that registrant’s parents were opposed to military service, although informant recalled no definite statements by them; that informant knew

no reason why registrant would be working in a dairy if it were not to gain the advantage of deferment, as registrant had made good grades in the University and his father was financially able to pay registrant's expenses there; that informant never had quite known whether registrant was actually opposed to military service or whether his parents had talked him into it; that when registrant went up for re-classification, he had resigned himself to accept the decision of the Board, informant recalling that registrant's parents had been very strict with him and for a long time had refused to allow registrant to own a bicycle because of fear that registrant might injure himself while riding it; that informant had not talked recently with registrant concerning religious beliefs but that previously registrant had professed to be an Atheist, and that neither he nor his parents belonged to any church, and that registrant in discussion of the international situation had expressed himself as being anti-British (registrant denied that he was anti-British, although opposing as he said some of the things which the English had done, referring particularly to India—H.O.); that registrant's habits were good, registrant not smoking nor drinking; that registrant's opposition to military service was not due to lack of courage, as registrant could not be classed as yellow, and that informant believed that registrant was sincere.

“Another party stated that registrant was very radical in his philosophy and one night at dinner had stated that he was an Atheist; that informant

had not heard registrant express his views as to conscientious objection but that informant was not surprised that registrant did object.

“A former intimate friend of registrant stated that registrant first commenced discussing the draft about three years ago, at which time registrant was interested in Engineering and Architecture and was going to the University of California in Los Angeles; that when registrant was threatened by the draft his parents withdrew him from school and registrant took employment as a milker in order that he might obtain deferred classification; that at some time in the summer of 1943 registrant had told informant that registrant was willing to go into the armed services, but that his parents strongly opposed his doing so; that registrant has told informant that registrant's father, as a young man, was interested in Communism and that registrant himself was known to informant to have read some of the writings of Karl Marx, having discussed such with informant from time to time; that some time in the summer of 1943 registrant told informant that registrant did not believe in the principles of this war and that he did not want to be a tool and he did not like the political set-up and that registrant at this time was very bitter in his denunciation of the war from a political standpoint; that registrant is a thoroughly honest and sincere individual of good character and habits and that informant believed that registrant was not an Atheist and had some belief in a supreme being and immortality; that while informant believes that regis-

trant is honest and sincere in his position at this time, informant is convinced that registrant is merely reflecting the thoughts and beliefs of his parents.

“CONCLUSIONS

“The Hearing Officer does not believe that registrant has any definite religious interest or any broad interest in social or political welfare. Apparently registrant and his parents have lived a very quiet life within their own family circle and have not been interested in public life or affairs; that registrant has an earnest desire to avoid going into the army with all the change in manner of living which army life entails, is quite apparent. The Hearing Officer cannot believe otherwise than that registrant's objection fundamentally is to this change in life and habits. Doubtless registrant is sincere in feeling that he cannot incur this change and that scenes of violence and carnage which are so different from what he has been used to must be wrong, and hence something in which he cannot engage. The Hearing Officer cannot pretend from one conversation of two hours' duration to understand and to analyze all the complexities of registrant's mind and motives, nor can the Hearing Officer pretend to know how many of registrant's now expressed ideas are recent developments due to registrant's obvious desire to avoid military service; however, the Hearing Officer certainly cannot ascribe to registrant any particular religious feeling, whether of transcendent character or arising from love of fellow

men and desire to bring about a better state of social existence. Registrant merely feels that as for himself he is opposed to engaging in war and military activity, it is not apparent that he is concerned with what others may conclude to do in these respects. In conclusion, the Hearing Officer cannot and does not find that registrant is conscientiously opposed by reason of religious training and belief, to participation in war and military service, therefore, the Hearing Officer finds that registrant's objections are not sustained, and Recommends that such objections be not sustained.

E. S. WILLIAMS

Hearing Officer

For the Southern District of
California."

"Dated: March 21, 1945.

"ESW:JM"

STIPULATION

Upon the admission of these five exhibits, it was stipulated and agreed between the parties, in open court, as follows:

"That the said exhibits show what was done, and the things that were done, on the days they reflect to have been done, and the classifications arrived at; that where a hearing was indicated therein to have been held, it was held; that the defendant was registered on the date shown; that he was within the territorial jurisdiction of the board; that the board was regularly and duly established and had jurisdiction over the defendant, and did conduct the hearings, made the classifications, from time to time,

as shown by the questionnaire; that notice of the Appeal Board's and the Department of Justice's action in respect to the defendant was duly given the defendant; that the order to report for induction was given to the defendant by mail; that he received it; and that he failed to report for induction on the date and hour required, and has since and does now fail and refuse to report for induction; and that the defendant is not now inducted, nor a member of the armed services, in any classification, of the United States, or any other country."

Mr. Carlson, the witness, continuing his testimony on direct examination, testified as follows:

He testified that Government's Exhibit No. 4 consists of letters which the local board received from the defendant in the regular course of the mails, and are a part of his file; and that defendant's claims that he was a conscientious objector, and that he should be exempt as an agricultural worker, were considered by the local board and the appeal board in arriving at the I-A classification.

Cross-Examination

He testified that on May 19, 1944, the defendant was ordered to report for a pre-induction physical examination at 6:30 A.M. on June 1, 1944, at 18451 Sherman Way in Reseda, California; and that defendant appeared at the time specified, passed his physical examination, and was found and duly certified as physically fit and acceptable by the Army for general military service on June 5, 1944.

The witness here identified, and there were taken from the defendant's Selective Service file and admitted in evidence as Defendant's Exhibits A, B, C, C-1, C-2 and D, the following:

DEFENDANT'S EXHIBIT A

Certificate of Fitness (DSS Form 218), dated June 5, 1944, signed by A. G. Harrison, Induction Station Commander, certifying that the defendant "having been given a preinduction Physical Examination was found: 1. Physically fit, acceptable by Army for general military service."

DEFENDANT'S EXHIBIT B

Report of Physical Examination (DSS Form 221), on which the above certificate of fitness was based.

DEFENDANT'S EXHIBIT C

Being the entire Selective Service file of the defendant, which was admitted with the agreement that any immaterial matter therein would be disregarded.

DEFENDANT'S EXHIBIT C-1

Special Form for Conscientious Objector (DSS Form 47), signed and filed by the defendant May 10, 1943, with his local board, and setting forth the following:

"1. Describe the nature of your belief which is

the basis of your claim made in Series I above. (Answer) I am conscientiously opposed to war and killing in any form as a violation of man's innate feeling and nature and his effort to lead a better life. War's waste of life and energies destroys all man's efforts toward a better natural and spiritual life, and I can take no part in it.

"2. Explain how, when and from whom or from what source you received training and acquired the belief which is the basis of your claim made in Series I above. (Answer) I have acquired my belief against war and killing (1) from early home training from my parents, (2) within the last few years thru seeing movies, such as 'All Quiet on the Western Front' and 'The Road Back.' I have fortified home training with conviction of my own.

"3. Give the name and present address of the individual upon whom you rely most for religious guidance. (Answer) John Thomson, 7914½ W. Norton Ave., Hollywood, Calif.

"4. Under what circumstances if any do you believe in the use of force? (Answer) I do not believe in the use of force to kill at any time. I do not believe in capital punishment. Force may be used to restrain, for instance, an insane, when this restraint is for the good of the individual or of society.

"5 Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions. (Answer) As far back as I can re-

member, I have never had a fight. I have never been allowed to own a toy gun. I have never owned a firearm of any kind. I have been taught 'Thou Shalt Not Kill,' not only in regard to man, but in regard to wild animals. To the best of my ability, I live up to the Ten Commandments.

"6. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where. (Answer) I expressed my views when I was thirteen in an editorial printed May 26, 1938, in 'La Cionica,' school paper of Bancroft Junior High School, Los Angeles, California, when I was editor of this paper."

Schools and colleges attended: 36th St. School, Forshay Junior High School, Bancroft Junior High School, Hollywood High School, and the University of California in Los Angeles, all public schools which are located in Los Angeles, Calif., between 1935 and 1942.

List of jobs held: Machine milker, Adohr Stock Farm, 18000 Ventura Blvd., Tarzana, Calif, 1942 to date.

Parents and Country of Birth: John J. Thomson and Oble L. Thomson, both born in U. S. A.

"Series IV—Participation in Organizations. 1. Have you ever been a member of any military organization or establishment? If so state the name and address of the same and give reasons why you became a member. (Answer) I was a member of

the R.O.T.C. at U.C.L.A. as membership in this organization was requisite, to my attendance at U.C.L.A.

"2. Are you a member of a religious sect or organization? (Answer) No.

"3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than religious or military: (Answer) I was a member of the Y.M.C.A. for approximately 4 mos. and performed no especial activities in or for the organization."

DEFENDANT'S EXHIBIT D

Editorial "Peace on Earth Good Will Towards Men," Dated May 26, 1938, published in the Bancroft Junior High School paper, reading as follows:

"Once a year a day is set aside on which we honor those who made the last great sacrifice for our country. We commemorate their deeds and ideals. It is fitting that on Memorial day we decorate the graves of our loved ones. But they are dead, they live only in memories. However, their ideals shall live forever, the end these soldiers strove for, the end we all strove for, Peace.

"Man is naturally peaceful. Often under the influence of political bosses he may be goaded into battle against a man for whom he holds no personal dislike. He knows only that he has been told to hate and kill this man. Therefore he picks up a gun and performs legalized murder. Live for your country

don't die for it! On this Memorial day let us re-dedicate our lives to aiding in making America a greater factor in a world peace movement."

Mr. Carlson, continuing his testimony on cross-examination, said:

The defendant was first given a 2-C classification by the local board on May 10, 1943; and this classification was continued on April 17, 1944, but the appeal agent for the government disagreed with this classification, and appealed the matter to the appeal board, which received the entire file, and reclassified the defendant I-A-O. The file was then transmitted back to the local board on May 8, 1944; and the local board then placed the defendant in class I-A-O in conformity with the appeal board's ruling.

The I-A-O classification is given conscientious objectors who in the opinion of the board should perform non-combat service in the armed forces, while the classification IV-E is given those who should go to a conscientious objectors' camp.

On May 15, 1944, the defendant, who had been notified of the new I-A-O classification, appeared before the local board requesting a IV-E classification; and the following day the local board sent the file of the defendant to Captain Harry A. Raider, Jr., Selective Service Coordinator for District No. 7, with a letter reading as follows:

"The local board is of the opinion that the registrant's religious background does not rate a IV-E classification. They also disagree with the appeal

board's I-A-O classification, since registrant checked both parts of Series X and signed Part B of Series I, in DSS Form 47. Please advise what action should be taken in this case."

The witness said the reason for sending the file to Captain Raider was that the local board could not change the classification given by the appeal board unless the file should be sent to the coordinator for review; and the local board was of the opinion, from questioning the registrant, that he had very little religious background and for that reason was of the opinion that the I-A-O or IV-E was an erroneous classification. The local board wanted to be sure that it was right. The local board was of opinion that the appeal board's classification was wrong on May 8, 1944, although at that time the local board accepted the I-A-O classification given by the appeal board. The local board's opinion was based on the defendant's questionnaire, his conscientious objector's Form 47, and his hearing before the local board on May 15, 1944, at which time he submitted a letter, and also on other data in the file.

The witness said that it did appear in his letter that the defendant said he had "no church affiliation at all"; and the defendant was asked on what he based his objections, and he said: "My conscience will not allow me to be under military service. My training for this was in my home and since I have been old enough to figure things out for myself I have been convinced of this belief."

Mr. McCall objected to the line of questioning

on the ground that it was immaterial, since the only material matter was whether the local board had ordered the defendant to report for induction, and he had failed to appear.

The Court: "I do not wish to indicate by any ruling now that I am agreeing with the defendant's position, but I do think that it is of sufficient moment that it deserves consideration, and rather than give it quick and brash judgment I will let the evidence go in and hear the argument on the point.

"For that reason I am going to overrule your objection and permit the evidence to go in, and if I conclude that you are correct it may be stricken or the same result will be reached in any event should I decide that you are right by a verdict of guilty."

Mr. Carlson's cross-examination continued:

The minutes of the meeting of the local board on May 15, 1944, at the time when the defendant appeared before it shows the following: "The local board is of the unanimous opinion that the religious background of the registrant does not warrant a IV-E classification."

The whole file was sent to Captain Raider, on May 16, 1944. Captain Raider sent it to the appeal board which on June 1, 1944, gave the defendant a IV-E classification; and later, on July 11, 1944, without returning the file to the local board, the appeal board reconsidered its own classification and

placed the defendant in 2-C. The file was then returned to the local board.

On September 6, 1944, the local board classified the defendant I-A. The defendant's deferment was up at that time, and the Selective Service System was in need of men between the ages of 18 and 26. Before calling up the 2-C's, the local board exhausted the 2-A's and 2-B's. For a time before that, the 2-C's, meaning agricultural workers, were practically immune from the draft, but the local board had later gotten orders to dip into the 2-C's in order to fill their quotas. On September 6, 1944, in order to fill its quota, the local board reclassified the defendant I-A. He was a single man, and not entitled to IV-E or a I-A-O classification.

After the defendant's 2-C classification on July 11, 1944, the local board sent the case to the U.S. D.A. war board for its investigation and recommendation, and they did not recommend a IV-E classification.

Following the defendant's I-A classification on September 6, 1944, the matter went to the Department of Justice which conducted a hearing and ruled that the defendant was not entitled to classification as a conscientious objector, as shown by Government's Exhibit No. 5. The witness said he did not believe that the defendant filed any kind of document pertaining to his religious belief between July 11, 1944, and September 6, 1944.

On November 5, 1944, the defendant requested a

hearing before the local board, and he appeared at a hearing on November 15, 1944. Then he wrote the local board a letter on November 28, 1944, and took an appeal on November 30, 1944. At the November 15, 1944, hearing no new evidence was submitted and the I-A classification was continued by the local board. The letter of November 28, 1944, was considered by the local board, and the classification continued. There has been no change in his classification since that time, either by the local board, the appeal board or the Department of Justice.

The board took into consideration the oral statements of the defendant when he appeared before the board on November 15, 1944. They were a repetition of the same statements he had previously made.

Here the Government rested its case.

JACK EUGENE THOMSON

Called as a witness by and on behalf of the defendant having been first duly sworn, was examined and testified as follows:

He has been a milker for the last past two and one-half to three years; he decided to become one because he preferred this work, work consistent with his beliefs as a conscientious objector, to the work done in Civilian Public Service Camps, Civilian Public Service Camps being the place where conscientious objectors are sent to do work of "na-

tional importance''. However, he has always been willing to go to a C.P.S. Camp if ordered, or to do any other work of national importance. He has no objection to serving in a hospital under civilian direction, fighting forest fires, or donating blood to the Red Cross.

He did not comply with the order for induction for "when a man joins the Army he has got to be ready to kill, and I don't think that I have a right to take another man's life. It is my belief that men all over the world are brothers, are related."

Further explaining this point he stated "In a word, I knew that I would be required to kill if I joined the Army, and I can't take the life of a fellowman. Therefore I didn't show up for induction . . . "life to me is sacred, it is something that is beyond the touch of mortals. It is something that is given to you, and another man's life is given to him. It is not for another mortal to take it from him."

"The Court: Have you ever been a member of any religious sect such as the Methodist, the Baptist, the Jewish church, or the Mohammedan, or the Four Square Gospel?

"The Witness: No, I haven't.

"The Court: Catholic or Episcopalian church, have you ever been a member of any of those?

"The Witness: No.

"The Court: Have you ever studied their doctrines?

"The Witness: Not deeply; no.

“The Court: Well, have you ever read the Bible?

“The Witness: Yes.

“The Court: Which Bible?

“The Witness: I have read the Christian Bible and parts of the Mohammedan, the Koran I believe it is.

“The Court: Do you read the Old Testament?

“The Witness: I have read parts of both.

“The Court: And the New Testament?

“The Witness: Yes, sir.

“The Court: When did you first begin to get these ideas?

“The Witness: Well, that is hard to say. It has been a long time ago.” (R. 96-87)

The witness said that he is the only child of his parents; that his father and mother do not hold adherence to any commonly recognized religion, such as Baptist, Methodist, or any others named by the Court; that he is not aware that his parents are students of the Bible; and that they never instructed him in the Bible, nor urged him to read it; nor had they ever urged him to read any other religious works or literature.

“The Court: They have given you no religious instruction at all then?

“The Witness: Not in the sense that they taught the doctrines of any of the recognized creeds, but my father especially has taught me, at least started me out on these lines, on these ideas which I now believe in, that life is sacred and that

no one man has a right to do an injustice to another, an injustice of any kind.”

The witness testified he had never attended with his parents any religious service, or Sunday school; and that the witness had never attended except “possibly once or twice.”

He first expressed himself on the subject of peace at the age of 13, when he was editor of the Bancroft (Jr.) High School Paper, when he wrote an essay on peace. The essay was later introduced in evidence as Defendant’s Exhibit D.

His parents belong to no church but gave him instruction along the lines of his present belief. He stated that his father’s objection to war was strictly humanitarian and the discussions they had were more or less of the nature of teacher and pupil rather than arguments. He testified that he always had opposition to war and that he regarded life as sacred. The following are excerpts from the testimony on the nature of his beliefs:

“The Court: While you are on that, you stated a while ago that the basis of your philosophy, if it may be called that, or your religious belief, is that you regard life as something sacred and you have no right to take any life which is sacred, what do you mean by a sacred gift?

“The Witness: It is a gift from something beyond man, some power beyond man, and as such a gift no man has a right to touch it.

“The Court: Do you in your religious belief

have a concept which is equivalent to the Christian concept of God?

“The Witness: Yes, I have.

“The Court: What do you call it?

“The Witness: Well, I never——

“The Court: Do you call it God?

“The Witness: I never put a name on it. It is just power. I simply thought of it and referred to it in my thoughts. I haven’t discussed my religious feelings with many people, and I have not been called upon to put a name on it.

“The Court: Well, in your own thinking aren’t you called upon to define it or, for lack of a definition, to give it a name?

“The Witness: I have accepted, since the term is always used in connection with this power, the term of God.

“The Court: What is your concept of God then?

“The Witness: Well, God is a power that exists.

“The Court: Do you regard it within the power of humans to conceive actually what this power is?

“The Witness: No, I don’t think so. I think that the only connection which the human mind has with God, is the manifestation of the voice of God which I think is conscience, something that gives you direction, tells you this is right or that is wrong, that you shouldn’t do that.

“The Court: Go ahead.

“By Mr. Wirin:

“Q. Now in the hearing officer’s report, which

contains a summary of the FBI report which was based upon interviews with FBI agents, it is reported that one of the persons thought that you were an agnostic. Are you an agnostic?

“A. No. Of course that depends upon your definition of being an agnostic. I do believe in a power beyond man, a power which I think of as God.

“Q. Now also in one of the FBI reports there is a reference to a statement by someone who knew you, that he thought you were an atheist. Are you an atheist?

“A. No, that is not correct.

“Q. There is a reference—it is on page 14 of the report—that one person who knew you thought that you were not an atheist, that you believe in a Supreme Being and immortality. Do you believe in a Supreme Being and immortality?

“A. I do believe in a Supreme Being. As to immortality, I haven't decided yet. (R. 102, 104)

“Q. Now does this belief of yours in a Supreme Being have any relationship to your attitude toward war?

“A. Yes.

“Q. What is it?

“Mr. McCall: Your Honor please, may I make one more objection, and that is this, that even if it were permissible to examine into the correctness or incorrectness of the classification given by the local board, and if this were a habeas corpus hearing, additional evidence such as this would not be admissible. It would be tried then upon the record

of the local board as to what was before them. It wouldn't be a re-trial before your Honor.

"The Court: I think probably you are correct. I will let him put his evidence on subject to the same motion.

Additionally he testified:

"A. Well, as I said, a man's conscience is the voice of God within him, and what your conscience dictates to you is a command from this Supreme Being.

"Q. What is that command to you in connection with war or participation in war?

"A. The demand to me was "Thou shalt not kill."

"Q. Where does that come from, the original phrase?

"A. The original phrase of course comes from the Bible.

"Q. In other words, you do accept that part of it?

"A. Yes, I do. (R. 105)

On the subject of his religious training:

"Q. What do you mean by training you in pacifism?

"A. Essentially it was my father's teaching that I should live by the Golden Rule.

"Q. What is the Golden Rule as you understand it?

"A. The Golden Rule was that I should do unto other men as I expected and wanted them to do unto me.

"Q. Do you know the origin of the Golden Rule, where it first appears?

"A. No, I am not acquainted with that.

"Q. Was it stated by some religious person, do you know?

"A. I know that if not the text of that, a teaching very similar to it was given by Christ.

"Q. Now in this statement you said "They (referring to your parents) taught me that full life is obtained only by helping one's fellows." Then you said, "I am not a member of any sect, yet I look at the life of Christ as a perfect example of man's behavior towards his fellows. I know if Jesus were alive today he would stand beside me protesting against war." Was that your opinion at that time?

"A. Yes.

"Q. Has that been your opinion during this entire period?

"A. Yes, it is my opinion now. (R. 106)

"The Court: Has it ever occurred to you that perhaps your mind might change?

"The Witness: Yes, it changes all the time.

"The Court: What is your objection to joining the Army and taking your chance on being assigned to non-combatant work?

"The Witness: Well, I think that to come under military supervision in any manner is to give your sanction to militarism, which I don't wish to do. (R. 107)

The witness said he was aware that in the United States Army there are both Quakers and Seventh

Day Adventists engaged in non-combatant service, who have such beliefs as the defendant professes, fundamentally, in that they hold it wrong for a man to take the life of another under any circumstances; and that they find their beliefs consistent with non-combatant service; but that he departs from their belief in that "I feel that to join the Army, to accept military direction, is to vote for war, to condone it, which I do not wish to do." He said he did not condemn the work of soldiers, for them. "I think that they, I presume at least, are following the dictates of their conscience and whatever man decides to do that is his decision and should be respected, and I do respect it." He said he would be willing to help one who had been injured in connection with his participation in the Army, "if you would be permitted to help such a person under civilian direction rather than in the Army."

The defendant said he was not willing to accept a I-A-O classification, "because in such event I would be placed under military jurisdiction"; and that he had made that statement to the local board; that Mr. Carlson of the local board had pointed out this difference between a I-A-O and a IV-E classification.

"Mr. Wirin: Did you give any reason why you couldn't or wouldn't accept military direction?

"A. Yes.

"Q. What did you say?

"A. I believe I stated before the recess that I

think to accept military jurisdiction or military direction is to condone war as an institution, and I won't do that."

The defendant testified he had no resentment or animosity towards soldiers but on the contrary respects their right to make decisions for themselves. (R. 116)

Cross-Examination

Defendant left college principally to work in a dairy to secure a draft deferment (R. 119). When at college he was in the ROTC at the University of California at Los Angeles and was a Corporal (R. 124).

Defendant testified that he had never given any thought to whether soldiers will be punished in any manner, in any life after death, for participating in, or killing other men during a war; and that he has no conviction or thought as to whether there is, in the after life, any punishment administered to one who kills.

"Q. Well, you feel actually, don't you, that if you were in the Army and you were compelled to go up in the front line and you met the foe and you killed a man, or two, or five, or a dozen, that there would be no punishment in the life hereafter for you for doing that?

"A. That is right.

"Q. You don't feel that?

"A. I don't feel that I would face punishment; no."

The defendant said he had never expressed any objections to the officials at the University of California at Los Angeles about participating in the ROTC; and that he suspected that men in the Army who have to kill people have the same revulsion for it that he, the defendant, has. He is not married, has no dependents, and is 20 years of age.

Re-direct Examination

He was a member of the ROTC because it was a requisite to his attendance to the University of California at Los Angeles. Though other schools were available he went to UCLA because it was close to home and it has a good academic standing; he saw nothing in the military drill that was contrary to his conscience because he was not to be called on to kill anyone.

This was all the evidence in the case.

The defendant rested and the case was argued by counsel.

During argument of counsel, the following occurred between defense counsel and the Court:

“Mr. Wirin: We think that in this case the judgment of not guilty ought to be entered if the Court has the power of review. I would like to go into that, if I may, first briefly and then perhaps more extensively if the Court permits it.

“We say that a broad or liberal definition of “religious training and belief” should have been given by the selective service agencies and should

be given by this Court, as was given by the Second Circuit in the Downer case and in the Kauten case.

“The Court: I don’t think the record shows that they failed to do that. In the hearing here they inquired into all his background, his neighbors, friends, high school associates, his personal beliefs, conversations at dinner tables and his foreman, and they inquired from everyone who would ordinarily have expressed to them a man’s views, what this man’s views were, to see what his religious beliefs were. And they came to the conclusion that his belief was not based on religious training and belief.

In announcing the verdict and decision, the Court said:

“The Court: I have admitted evidence in the case and indicated that a ruling would be made. I will now affirm the rulings which I have heretofore made overruling the objection of the Government.

“It seems to me that even though there is some appeal in reason to defense counsel’s distinction between this case and the Falbo case, that I am bound by the Flakowicz case, 146 F. (2d) 874, Cert. Den. 65 S. Ct. 1086, 89 L. Ed. 1069, 324 U. S.—). While it is not in this Circuit, it is of the Second Circuit and I believe that I am bound by it. That reason alone would be sufficient to sustain a verdict of guilty.

“However, the case will probably find its way into the higher courts and they will probably ex-

press a statement that the lower court should not have touched on its views. Assuming that the Flakowicz case would not be followed in this Circuit, the question then arises as to the extent of review which this Court has the power to make upon this proceeding, a criminal proceeding, where a not guilty plea is entered and the defendant is put on trial. I do not believe that the Court could go any further in this proceeding than it could in a habeas corpus proceeding which, without any extended statement of the law in connection with it, probably would be summed up to say that a court is limited to determining whether or not the local board and the appeal board in this case, before which the case regularly and statutorially got, and who had the statutory power to make the decision, were arbitrary and capricious, which describes generally the various elements that must be taken into consideration.

“Assuming therefore that I had that power to review, I cannot say that the local board or the appeal board acted arbitrarily or capriciously. I think that they extended a complete opportunity to the defendant here to be heard, that they did hear him, that they took everything into consideration and did not limit their inquiry to merely whether or not he was a member of any church or read any particular religious book or Bible, or any other book which espouses religious views or beliefs, but that they took into consideration everything that he had to offer, as well as his conduct, and life in

the past, and his general attitudes as expressed by his conduct. Therefore I would have to find the defendant guilty in the event that the Flakowicz case is not followed by the Ninth Circuit because I cannot find that the draft boards were arbitrary and capricious.

“On the third point raised, which, in reality, was raised first, the construction of the statute, that is, the phrase “religious training and belief,” I think that I have expressed myself on that during the course of the argument, but in order that it may be stated in this summary form, again I will state that I do not believe that the record shows a misconstruction of the statute. The boards did take into consideration everything about this man which he had to offer and did not limit themselves to any of the conventional means of getting religious training.

“That reviews the points that have been raised. I don't think that I have the power to weigh the evidence de novo. But in the event that the Circuit should hold that this Court had the power and the duty, I have already indicated that the motions to strike if made would be denied and the rulings I have heretofore made would be followed; but in that event I think that I would be constrained to hold, were this Court held to be the trier of the fact, that this young man is not conscientiously opposed to war because of religious training and belief. So on the merits, were I trying it on the merits, I am afraid I would have to find him guilty.

I think he possesses and exhibits perhaps a little more bewilderment than is ordinarily possessed by young people who are about his age concerning the recurrent and wonderful thing of youth, questioning everything that has gone before; I think perhaps that there are some things about which he has not yet made up his mind, and perhaps some things which he will never so long as he lives reach an exact evaluation of, as I believe every person with an inquiring mind should. But I don't believe that I could say, were I trying it on the merits, that his objection to becoming a member of the armed forces and his violation of the law in this case was due to his religious training and belief.

"I realize that it is not incumbent upon the Court, when the jury is waived, to make any statement such as I have made here, explaining its views and that it is to be expected that the answer will be found in the words "guilty" or "not guilty." But I have done so in this case in order to give counsel, as I would want to do were I representing either the Government or the defendant, my reasons; because if my reasons are not good, then my judgment is not good.

"The judgment is guilty as charged."

The foregoing Bill of Exceptions, together with the exhibits and the various stipulations therein mentioned, contains all the evidence adduced on the trial of this cause and correctly shows the various proceedings during the trial. The same being true and correct and being duly presented within the

time fixed by law and the proper and seasonable extensions of time duly granted, it is accordingly settled and allowed.

Dated: October 23, 1945.

PEIRSON M. HALL,

United States District Judge

Approved both as to form and substance:

CHARLES H. CARR

United States Attorney

JAMES M. CARTER and

JAMES C. R. McCALL, Jr.

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[Endorsed]: Filed Oct. 22, 1945.

[Endorsed]: No. 11113. United States Circuit Court of Appeals for the Ninth Circuit. Jack Eugene Thomson, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed November 23, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11113

JACK EUGENE THOMSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ADOPTION OF ASSIGNMENTS OF ERRORS
AS POINTS ON APPEAL

Appellant adopts as his Points on Appeal the Assignments of Errors appearing in the Transcript of Record; The parts of the record necessary for the consideration of said Points are the parts enumerated in the Praeipce to the Clerk of the United States District Court, filed and served on November 14, 1945 and appearing in the Transcript of Record and, additionally, the remainder of the exhibits that were introduced in evidence.

A. L. WIRIN and J. B. TIETZ

By J. B. TIETZ

Attorneys for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed December 3, 1945. Paul P. O'Brien, Clerk.

